

**BEFORE THE
CASE REVIEW PANEL**

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| In The Matter of R.V., |) | |
| Petitioner, |) | |
| and |) | |
| The Indiana High School Athletic Assoc.,Inc., |) | CAUSE NO. 001114-5 |
| Respondent, |) | |
| |) | |
| Review Conducted Pursuant to |) | |
| I.C. 20-5-63 <i>et seq.</i> |) | |

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner is a 16-year-old eleventh grade student enrolled in Evansville Mater Dei High School, a nonpublic high school that is a member of the Indiana High School Athletic Association (IHSAA), the Respondent herein. He was enrolled in Evansville Reitz Memorial High School for the first two years of high school, where he participated in freshman baseball and on the junior varsity soccer team. Evansville Reitz Memorial is a nonpublic school that is also a member of the IHSAA. He was cut from the soccer team before school began for the 2000-2001 school year. He withdrew from Reitz Memorial on August 14, 2000, and transferred to Mater Dei. One of the stated reasons was because he had been cut from the soccer team and had not been encouraged to try out for the team in the future.

Mater Dei submitted on August 16, 2000, the IHSAA Athletic Transfer Report on behalf of Petitioner. On August 23, 2000, the IHSAA declared Petitioner athletically ineligible for 365 days under Rule C-19-4.¹ Petitioner appealed this decision on August 31, 2000, to the IHSAA Review Committee.

¹The IHSAA has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders (“B” for Boys; “G” for Girls), but most of the by-laws are “common” to all potential athletes and, hence, begin with “C.” Rule 19, which governs transfers and eligibility, is common to all athletes. **Rule C-19-4** addresses transfers that are primarily for athletic reasons. Students who transfer primarily for athletic reasons or as the

Petitioner was not seeking full eligibility but was seeking “limited eligibility.”² A hearing was held on September 7, 2000. A written decision was issued on September 12, 2000, upholding the original determination that the transfer was primarily for athletic reasons, thus precluding the Petitioner from interscholastic competition for 365 days from enrollment in Mater Dei. Petitioner represented that the transfer was not solely for athletic reasons but included enhancement of his self-confidence, emotional well-being, and social development, as well as providing educational opportunities for a younger brother, who also transferred high schools but does not play sports. The Review Committee did not believe that Petitioner stated sufficient facts to invoke the Hardship Rule.³ The written decision also concluded (Conclusion No. 3) that granting an exception to Petitioner would cause the displacement of “an existing bona fide student from participating on Mater Dei’s reserve or varsity soccer squad”; would “be at odds with fair, equitable and uniform standards under which Indiana interscholastic athletic competition takes place; and would “suggest that interscholastic athletic participation, and not

result of undue influence are not eligible for interscholastic competition for a period not to exceed 365 days after enrollment.

² “Limited eligibility” is defined under **Rule 19** as meaning a student may participate in all interschool athletics, except on varsity athletic teams, for a period of 365 days from the date of last participation at the previous school. The “limited eligibility” rule can be applied to situations where, as here, there has been no corresponding change of residence. See **Rule C-19-6.2**. All references herein are to the IHSAA’s By-Laws for the 2000-2001 school year.

³**Rule C-17-8** is the IHSAA’s “Hardship Rule.” Generally, the “Hardship Rule” allows the IHSAA “to set aside the effect of any Rule [with some exceptions] when the affected party establishes, to the reasonable satisfaction of [the IHSAA], all of the following conditions are met:

- a. Strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule;
- b. The spirit of the Rule has not been violated; and
- c. There exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule.” **Rule C-17-8.1.**

The IHSAA, on its own initiative, can invoke the “Hardship Rule,” but a member school cannot. **Rule C-17-8.2.** The IHSAA provides some guidance and examples as to what would be considered a “hardship.” See **Rule C-17-8.4** (e.g., injury, illness or accidents that result in a student being unable to meet a basic requirement; substantial changes in the financial condition of the student or his family, although these would have to be permanent and “significantly beyond the control of the student or the student’s family”) and **Rule C-17-8.5**, which applies directly to **Rule 19** (the “Transfer Rule”), specifically **Rule C-19-6**, which allows the IHSAA to grant full eligibility where (a) the student establishes “the transfer is in the best interest of the student and there are no athletic related motives surrounding the transfer,” and (b) the principals of the sending and receiving schools affirm in writing that the transfer is in the best interests of the student and there are no athletic-related motives.

academics, may assume a dominant position in a student's attendance at school."

Petitioner did not challenge further the decision of the IHSAA. On or about October 4, 2000, Petitioner asked the IHSAA to reopen the matter and reconsider its decision not to grant him "limited eligibility." This process is permitted under **Rule C-17-5.2**. In order to reopen a matter, the Committee would have to do so by a majority vote. At its meeting of November 3, 2000, a motion was made to reopen the matter but died for a lack of a second. Petitioner now seeks review by the Case Review Panel.

APPEAL TO THE CASE REVIEW PANEL

Petitioner seeks eligibility in order to participate in interscholastic sports offered during the spring semester.⁴ Petitioner asserts that he participated only in soccer during his sophomore year, and that an exclusion from all sports for 365 days is excessive. Petitioner sent his appeal via facsimile transmission on November 14, 2000. The parties were advised of their respective hearing rights. Petitioner's parents elected to make this proceeding closed to the public. A hearing date was set for Monday, November 29, 2000, in Indianapolis, beginning at 11:00 a.m. local time.

The parties appeared on that date. Petitioner was represented by his father. Respondent was represented by counsel. Witnesses were sworn and testimony taken. Based on testimony at the hearing and documentary evidence presented therein, as well as in consideration of the record as a whole, the following Findings of Fact and Conclusions of Law are determined.

FINDINGS OF FACT

1. Petitioner is in the eleventh grade at Evansville Mater Dei High School (hereafter, "Mater Dei"). He was enrolled in Evansville Reitz Memorial High School (hereafter, "Memorial") for his first two years of high school. On August 9, 2000, he was cut from the soccer team at Memorial. Although Petitioner and his parents sought some encouragement from the soccer coach that he could try out for the soccer team the following year, such was not forthcoming from the coach. He declined to meet with the parents and indicated that the Petitioner no longer had any realistic

⁴Originally, it was thought that Petitioner sought "limited eligibility," but as he did not participate in any sports other than soccer at his previous school, granting "limited eligibility" at this date would be the same as "full eligibility."

opportunity to play soccer at Memorial. Petitioner acknowledges that he would have remained at Memorial had he not been cut from the soccer team. He also explored transferring to Evansville North High School, where he would have played for a former coach.

2. Petitioner transferred to Mater Dei on August 14, 2000. Petitioner does not deny that this move was predicated in no small part on his desire to play soccer. Petitioner was aware that such a move would preclude participation at the varsity level for this season, but was hopeful he could participate at the junior varsity level. On August 16, 2000, Mater Dei submitted the appropriate IHSAA transfer application, but the Petitioner was denied eligibility on August 23, 2000, by Respondent. Petitioner availed himself of all procedural recourse available to challenge the denial of eligibility. Petitioner acknowledges the importance of the IHSAA's rules regarding transfers that are motivated primarily by athletic concerns, but asserts that his circumstances dictate that an exception should be made to the 365-day athletic exclusion from his date of enrollment in Mater Dei.
3. Petitioner participated in freshman baseball at Memorial, but did not participate in any spring sports at Memorial during his sophomore year. He would like to try out for the golf team or track team at Mater Dei, the latter primarily for conditioning in preparation for the soccer season of the 2001-2002 school year, when he would have full eligibility. He has not previously participated in these sports. Mater Dei does not field junior varsity teams in these sports.
4. Petitioner asserts that his transfer from Memorial was not for athletics but because of athletics, in part because of the lack of response and encouragement from the Memorial coach. Petitioner also argues that the IHSAA's rules do not mandate a 365-day exclusion but permit a lesser time period. IHSAA representatives do not dispute that the language of the rule would permit a lesser time, but it was not in their collective memory that any lesser period of time has been applied in any previous circumstances.

CONCLUSIONS OF LAW

1. Although the IHSAA is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition is "state action" and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. P.L. 15-2000, adding I.C. 20-5-63 to the Indiana Code. The Case Review Panel has jurisdiction when a parent or guardian may invoke the review function of the Case Review Panel. In the instant matter, the IHSAA

has rendered a final determination of student-eligibility adverse to the student. The parent has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter.

2. Although Petitioner's arguments and candid responses are persuasive to a point,⁵ the primary reason the IHSAA was formed in 1903 was to prevent transfers that are primarily for athletic reasons, including those transfers that are the result of undue influence or school "jumping" for athletic reasons. It is immaterial that Mater Dei's soccer program is not at the same competitive level as Memorial's program. School "jumping" occurs both ways and for a variety of reasons, including transferring to a smaller school or less competitive program to enhance athletic opportunities. There is no evidence of undue influence in this matter. Petitioner's transfer was motivated by sincere family concerns, but was nevertheless motivated primarily for athletic reasons with respect to Petitioner, who would have remained at Memorial but for being cut from the soccer team and discouraged from trying out the following year.

ORDER

The Case Review Panel, by a 5-1 vote, sustains the decision of the Indiana High School Athletic Association to exclude Petitioner from interscholastic competition for a period of 365 days from the date of his enrollment in Mater Dei.

DATE: November 28, 2000

/s/ John L. Earnest, Chair
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.

⁵It should be noted that there was considerable understanding of the circumstances articulated by Petitioner and his representatives. An initial motion of the Case Review Panel was to permit Petitioner to participate in interscholastic competition for spring sports this school year, but not at the varsity level. This would have permitted him to participate in either golf or track, but his score or placement would not count in the tabulation of the varsity score. This motion, which was discussed favorably by CRP members, failed to pass by a 3-3 vote.

